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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20540**

**FILE:** B-205390

**DATE:** April 6, 1982

**MATTER OF:** Margaret Anderson - Request to Retro-actively Change Date of Conversion from Full-Time to Part-Time Employment

**DIGEST:**

Employee of Veterans Administration (VA) facility voluntarily applied and was selected for conversion to part-time employment which became effective April 8, 1979, the same date as provisions of the Federal Employment Part-Time Career Act of 1978, which reduced Government health benefit contributions for part-time employees. Failure of VA Center to notify employee prior to conversion that part-time employment would increase her health benefit costs is not an administrative error which would create entitlement under the Back Pay Act, 5 U.S.C. § 5596, where the VA facility received notice of the Act's provisions subsequent to the employee's conversion. Further, the Office of Personnel Management's regulations are clear on their face, have the force and effect of law, and this Office does not have the authority to waive them.

Mr. Frank J. Lucas, President of the National Federation of Federal Employees Local 225 in West Fargo, North Dakota, has requested a decision concerning the claim of Mrs. Margaret Anderson, an employee of the Building Management Service, Veterans Administration's (VA), Medical and Regional Office Center, Fargo, North Dakota. We are treating this claim pursuant to our jurisdictional authority outlined in Title 4, Part 31, Code of Federal Regulations.

The issue we are presented is whether an employee's part-time employment date may be retroactively changed so as to reduce the amount paid for health premium benefits. For the following reasons, the claim is denied.

In March of 1979, Mrs. Anderson voluntarily applied and was selected for conversion from the full-time position of Supervisory Clerk, GS-301-7, to the part-time position of Clerk (Typing), GS-301-4. Although she was selected for conversion on March 14, 1979, she did not actually begin the part-time job until April 8, the date agreed upon by the losing and gaining departments.

April 8, 1979, was the date the health benefits pro-rata provisions of the Federal Employees Part-Time Career Act of 1978, Pub. L. No. 95-437, 92 Stat. 1056, 5 U.S.C. § 3401 (Supp. III, 1979), went into effect. In accord with those provisions, part-time employees starting work on or after April 8, began to receive only a percentage of the regular Government contribution toward the cost of their enrollment in the Federal Employees Health Benefits Program, determined by the percentage of full-time service regularly performed.

Mrs. Anderson requests that her conversion to part-time employment be made retroactive to before April 8, 1979, and that her agency refund excess health benefit contributions withheld from her salary. She claims that she is entitled to be accorded the same treatment as part-time employees on the rolls prior to April 8, 1979, because the Federal Employees Part-Time Career Act of 1978, was enacted on October 10, 1978, and her agency did not notify her of its effect until 10 days after her conversion, and such notification would have influenced her final decision.

In response to our request, the Medical and Regional Office Center sent us a report explaining that they did not inform Mrs. Anderson that her conversion to part-time employment would alter her health benefits costs because they did not receive notification of the effect of the Federal Employees Part-Time Career Act until April 16, 1979. On that date they received a teletype message issued by the Veterans Administration Central Office and immediately notified Mrs. Anderson. In the teletype message, the VA Central office explained that their delay was caused by the Office of Personnel Management's delay in issuing instructions. Although an advance edition of the Office of Personnel Management's FPM Letter 890-22 was apparently issued on April 6, 1979, the letter is officially dated April 23,

1979, and the Medical and Regional Office Center reports that it received a copy on May 18, 1979.

While it is unfortunate that Mrs. Anderson was not notified that a change to part-time employment would increase her health benefit costs, we do not believe that the circumstances described above entitle her to relief under the Back Pay Act, 5 U.S.C. § 5596 (1976), the provisions of which are the only basis upon which we could grant her claim. The Back Pay Act provides that an employee who is found to have been affected by an unjustified or unwarranted personnel action which results in the withdrawal or reduction of all or part of his or her pay, allowances, or differentials otherwise due, is entitled to recover the amount he or she would have received if the personnel action had not occurred.

We have allowed relief under the Back Pay Act and have made exceptions to the general rule against retroactive personnel actions where administrative or clerical error (1) prevented a personnel action from being effected as originally intended; (2) resulted in nondiscretionary administrative regulations or policies not being carried out; or (3) has deprived the employee of a right granted by statute or regulation. Douglas C. Mueller, 59 Comp. Gen. 51, 53 (1978).

However, we do not believe that the VA's failure to notify Mrs. Anderson is an administrative error of a nature that will support a retroactive conversion date. The type of administrative error for which we allow relief under the Back Pay Act is one which falls within the definition of an unwarranted or unjustified personnel action. That definition is found in the Office of Personnel Management's Back Pay Regulations published at page 58275 of Volume 46 of the Federal Register (to be codified at 5 C.F.R. § 550.803) as follows:

"Unjustified or unwarranted personnel action' means an act of commission or an act of omission (i.e. failure to take an action or confer a benefit) that an appropriate authority subsequently determines, on the basis of substantive or procedural defects, to have been unjustified or unwarranted under applicable law, Executive order, rule regulation, or

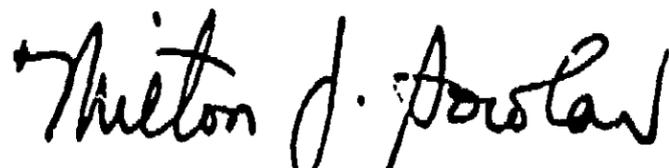
mandatory personnel policy established by an agency or through a collective bargaining agreement. Such actions include personnel actions and pay actions (alone or in combination)."

In accordance with the above-quoted language, an act of commission or omission must violate the requirement of a nondiscretionary provision in order to be considered unwarranted or unjustified. We do not believe an unjustified or unwarranted personnel action has occurred for we are unaware of a mandatory notice requirement or counseling obligation imposed on an agency in this type of situation.

Further, the Office of Personnel Management was authorized by statute to issue regulations within 180 days after enactment of Pub. L. No. 95-437, 5 U.S.C. §§ 3402(b)(1), 3406 (Supp. III, 1979). The regulations issued by the Office of Personnel Management in FPM Letter 890-22 are clear on their face and have the full force and effect of law. As such, this Office does not have the authority to waive them.

Although the record is silent on the matter, we assume that Mrs. Anderson worked and was paid on a full-time basis up to the date she converted to a part-time status. Therefore, she received all the pay and benefits of full-time employment that she was entitled to up to the date of her conversion. We also note that FPM Letter 890-22, paragraph VI gave the employee the opportunity to change enrollment from one plan to another. Thus, Mrs. Anderson could have switched to a less expensive health benefit plan if she chose to do so.

In view of the foregoing, Mrs. Anderson's claim is hereby denied.

*for*   
Comptroller General  
of the United States